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In the Supreme Court of the United States

OCTOBER TERM, 1941

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE STRONG MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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v.

THE STRONG MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above-entitled case on December 9, 1941.

OPINIONS BELOW

The majority and minority opinions of the United States Board of Tax Appeals (R. 19–22) are reported in 41 B. T. A. 1273. The opinion of the Circuit Court of Appeals (R. 134–141) is reported in 124 F. (2d) 360.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 9, 1941 (R. 134). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A note and mortgage agreement required the taxpayer corporation to apply 40 percent of each calendar year's net earnings upon the unpaid balance of its obligation. This payment was to be made by the taxpayer not later than April 15th of the succeeding year. The question presented is whether the designated percentage of the earnings for 1936 was an amount "required * * * to be paid * * * or to be irrevocably set aside within the taxable year" 1936, as specified in Section 26 (c) (2) of the Revenue Act of 1936.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix to the petition for a writ of certiorari in *Helvering* v. *The Ohio Leather Co.*, No. —, present Term, which is being filed together with this petition.

STATEMENT

In 1932, the taxpayer corporation became obligated upon a note in the amount of $50,000 which was secured by a mortgage (R. 14). The note was to be paid in eight annual installments of varying amounts, payments to commence April 15, 1934

(R. 15). In addition, the obligation provided that if 40 percent of the taxpayer's net earnings in any calendar year exceeded the prescribed annual payment then this excess was to be applied to the unpaid balance of the note (R. 16), but the payment of this additional sum was not required until April 15th of the succeeding year (R. 17).

On January 1, 1936, the taxpayer owed $47,000 on the principal amount of its indebtedness. During the year 1936, the taxpayer retired its obligation by payment of $46,500, the obligee waiving the balance of $500 and also waiving a small amount of interest. This sum of $46,500 was paid on the following dates and in the following amounts (R. 19):

2/15/36	$2,500	7/31/36	$1,000
4/15/36	2,500	8/14/36	500
5/15/36	500	8/31/36	2,000
5/29/36	1,000	9/15/36	500
6/15/36	500	10/15/36	34,000
6/29/36	1,000		
7/14/36	500	Total	46,500

By September 30, 1936, the taxpayer's approximate profits were $86,000. Since it appeared that taxpayer's profits would be such that 40 percent thereof would be in excess of the amount required to pay the note in full, it was decided to make the payment at that time (R. 19).

In computing the surtax on undistributed profits imposed by Section 14 of the Revenue Act of 1936, the taxpayer claimed a credit of $47,000 under Section 26 (c) (2). The Commissioner of Internal Revenue disallowed the credit (R. 6–8), but the

Board of Tax Appeals held that the taxpayer was entitled to a credit of $46,500 (R. 20). A small deficiency was entered against taxpayer upon uncontested issues (R. 23). The Circuit Court of Appeals affirmed the decision of the Board (R. 134).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the taxpayer corporation was entitled, under Section 26 (c) (2) of the Revenue Act of 1936, to a credit of $46,500 in the computation of its surtax on undistributed profits.

REASON FOR GRANTING THE WRIT

A writ of certiorari should issue for the reasons set forth in the Government's petition for certiorari filed herewith in *Helvering* v. *The Ohio Leather Co.*, No. —, decided by the court below on the authority of its decision in the instant case. The relevant provisions of the contracts in both cases are not identical but in view of the identity of the decisions it is clear that the present case did not turn upon any peculiar wording of the contract involved. The court below recognized (R. 140) that its decision was in conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Antietum Hotel Corp.* v. *Commissioner*, 123 F. (2d) 274.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

MARCH 1942.

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No. —

In the Supreme Court of the United States

OCTOBER TERM, 1941

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WARREN TOOL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1941

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GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WARREN TOOL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above-entitled case on December 9, 1941.

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 30–31) is not reported. The memorandum opinion of the Circuit Court of Appeals (R. 44) is reported in 124 F. (2d) 397.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 9, 1941 (R. 44). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

For sinking fund purposes the taxpayer corporation was by contract required to pay to a trustee on or before the first day of April of each year "a sum of money equal to Twenty-five Per Cent (25%) of its net earnings for the calendar year next preceding." The question presented is whether the designated percentage of earnings for the taxable calendar year was an amount "required * * * to be paid * * * or to be irrevocably set aside within the taxable year" as specified in Section 26 (c) (2) of the Revenue Act of 1936.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix to the petition for a writ of certiorari in *Helvering* v. *The Ohio Leather Co.*, No. —, present Term, which is being filed together with this petition.

STATEMENT

On November 1, 1932, the taxpayer corporation executed a first mortgage and deed of trust securing bonds issued on that date in the amount of

$65,000. Between November 1, 1932, and January 1, 1935, an additional $18,000 of bonds were issued and on January 1, 1935, $68,000 of bonds were outstanding: (R. 24.) The mortgage contained a sinking fund provision which required the taxpayer on and after April 1935, to pay to the trustee "on or before the 1st day of April of each year * * * a sum of money equal to Twenty-five Per Cent (25%) of its net earnings for the calendar year next preceding." And provision was made for the deposit of bonds in lieu of cash (R. 25).

The taxpayer had no net earnings in 1934 so that no sinking fund payment was made in 1935. However, it had net earnings for the calendar year 1935 in the amount of $15,020.84 so that the required deposit was $3,755.21. The necessary payment was made on March 23, 1936, by the deposit of bonds in the amount of $5,500, which had theretofore been purchased by the taxpayer (R. 25).

In December 1936 the taxpayer's accountant estimated that its net earnings for the year 1936 would be about $50,000. It delivered to the trustee $12,500 of its first mortgage bonds for which it had paid $12,755. In February 1937 the taxpayer certified to the trustee that its net earnings for the calendar year 1936 were $44,068.90 and therefore the payment owed to the trustee was $11,017.22 which had already been satisfied (R. 26).

In December 1937, the taxpayer's accountant estimated that its net earnings for the year 1937

would be about $50,000. It delivered to the trustee $10,000 of its first mortgage bonds for which it had paid $10,000. Later in the month of December 1937, the taxpayer, upon reconsideration of the matter, estimated that its net earnings for the calendar year 1937 would be about $52,000, based on the accountant's revised report. It delivered to the trustee $4,000 more of its first mortgage bonds on December 28, 1937, for which it had paid $4,000. The net earnings of the taxpayer for the year 1937 were thereafter determined by its accountant to be $52,214.10, and therefore of the $14,000 of its first mortgage bonds deposited in December 1937, $13,053.52 were one-fourth of the net earnings (R. 30).

In computing the surtax on undistributed profits imposed by the Revenue Act of 1936, the taxpayer claimed a credit under Section 26 (c) (2) of $11,017.22 for the year 1936, and $13,053.52 for the year 1937. The Commissioner of Internal Revenue determined that these credits should not be allowed and proposed to assess the resulting tax deficiencies (R. 5, 14). The Board of Tax Appeals held, however, that the taxpayer was entitled to the credits claimed, and that the proposed deficiencies were erroneous to the extent that such credits had not been allowed. Small deficiencies were entered against the taxpayer upon uncontested issues (R. 32). The Circuit Court affirmed the decision of the Board (R. 44).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the taxpayer corporation was entitled, under Section 26 (c) (2) of the Revenue Act of 1936, to credits of $11,017.22 and $13,053.52, in the computation of its surtax on undistributed profits for the years 1936 and 1937, respectively.

REASON FOR GRANTING THE WRIT

A writ of certiorari should issue in the instant case for the reasons set forth in the Government's petition for certiorari in *Helvering* v. *The Ohio Leather Co.*, No. —, a companion case involving the same issue and similarly decided by the court below.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

MARCH 1942.

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